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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
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10 CASSIOPEIA IP LLC,

11 Plaintiff,

12 v.

13 SYNOLOGY AMERICA CORP.,

14 Defendant.

15 Civil Action No. 2:22-cv-01521

16 PLAINTIFF'S RESPONSE TO ORDER
17 TO SHOW CAUSE

18 JURY DEMAND

19 **PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE**

20 Plaintiff Cassiopeia IP LLC, and its counsel, hereby files this Response to the Court's
21 Order To Show Cause dated February 3, 2023, and for the reasons stated herein, respectfully
22 requests that the Court not dismiss the action.

23 On October 26, 2022, Plaintiff Cassiopeia IP LLC ("Cassiopeia") filed this lawsuit against
24 Synology America Corp. ("Synology") for patent infringement. On October 28, 2022, this Court
25 issued the summons for the Complaint.

26 On February 3, 2023, the Court, noting that Plaintiff had not served Defendant with the
27 summons and copy of Plaintiff's complaint within the timeframe provided in Rule 4(m), issued
28 an Order to Show Cause.

Cassiopeia IP LLC v. Synology America Corp.
Response to Order To Show Cause

1 On February 1, 2023, prior to receiving the Order to Show Cause, Plaintiff had discovered
 2 that a clerical error and that the complaint and summons had not been served. Specifically, an
 3 entry had been made on my firm's internal records that the Complaint and summons was out for
 4 service. Declaration of John A. Lee ("Lee Decl"), ¶ 4. My firm immediately sent the Complaint
 5 and summons out for filing on February 1, 2023. *Id.* Service was completed on February 6, 2023.
 6 Proof of service was filed as Dkt. No. 7. *Id.* at ¶ 5. There was no malice or intent to delay these
 7 proceedings by Plaintiff. *Id.* at ¶ 6.

9 The Court must extend the time for service beyond 90 days if Plaintiff shows good
 10 cause. In the Ninth Circuit, "[a]t a minimum, 'good cause' means excusable neglect." *In re*
 11 *Sheehan*, [253 F.3d 507, 512](#) (9th Cir. 2001). "[G]ood cause generally means that service has been
 12 attempted but not completed, that plaintiff was confused about the requirements of service, or
 13 that plaintiff was prevented from serving defendants by factors beyond his control." *Chemehuevi*
 14 *Indian Tribe v. Wilson*, [181 F.R.D. 438, 440](#) (N.D. Cal. 1998) (internal quotation marks
 15 omitted). Here, Plaintiff believed that service had been made, due to the clerical error in
 16 counsel's office.

18 Absent good cause, courts have discretion "to extend the time for service or to dismiss the
 19 action without prejudice." *In re Sheehan*, [253 F.3d at 513](#). The Ninth Circuit has noted that "a
 20 district court may consider factors like a statute of limitations bar, prejudice to the defendant,
 21 actual notice of a lawsuit, and eventual service." *Efaw v. Williams*, [473 F.3d 1038, 1041](#) (9th Cir.
 22 2007) (internal quotation marks omitted). An extension of time for service may be
 23 retroactive. *Wright v. City of Santa Cruz*, [2014 WL 3058470, at *7](#) (N.D. Cal. July 3, 2014).

25 Here, there is no statute of limitations bar. In addition, there is no prejudice to the
 26 Defendant, if anything, the Defendant could argue that damages have been limited during this
 27 time. Further, actual notice and service have been made to now been made to the Defendant.

1 Lee Decl. at ¶7. Thus, even if good cause is not found, Plaintiff asks the Court to vacate the
2 Order to Show Cause and extend the deadline for service to February 7, 2023.

3 Dated: February 13, 2023

4 Respectfully submitted,

5 BANIE & ISHIMOTO LLP

6 By: /s/ John A. Lee, WSBA No. 35,550

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